

Illinois Use Tax can be avoided to the extent tax was paid to another state with respect to the sale, purchase or use of tangible personal property before bringing such property into Illinois. A credit in the amount of the tax properly due and paid in the other state will be allowed on the Illinois Use Tax return. Please see the enclosed copy of 86 Ill. Adm. Code 150.310(a)(3) (This is a GIL.)

September 27, 2001

Dear Xxxxx:

This is in response to your letter dated August 20, 2001. The nature of your letter and the information you have provided require that we respond with a General Information Letter, which is designed to provide general information, is not a statement of Department policy and is not binding on the Department. See 2 Ill. Adm. Code 1200.120 subsections (b) and (c), which can be found at <http://www.revenue.state.il.us/legalinformation/regs/part1200>.

In your letter you stated and made inquiry as follows:

Client Background

Our client, henceforth, referred to as The Company, headquartered in the State of STATE, is in the business of providing enhanced telecommunications services to the telecommunications industry. The Company contracts with wireless and wireline carriers to provide these services to the carriers' customers. These services are provided through a network of call centers located throughout the United States. The Company has a location in the State of Illinois and holds a Illinois Certificate of Registration to collect and remit sales and use taxes.

Purchases of Tangible Personal Property

The Company makes taxable and nontaxable purchases of tangible personal property for use at its locations. Taxable purchases are through one of the following methods:

1. The supplier delivers the tangible personal property directly to The Company's location in the State of Illinois. The supplier holds a Illinois Certificate of Registration and collects the Illinois Sales or Use Tax.
2. The supplier delivers the tangible personal property directly to The Company's location in the State of Illinois. The supplier does not hold a Illinois Certificate of Registration. The Company accrues and remits the Illinois Use Tax.
3. The supplier delivers the tangible personal property to The Company's headquarters in the State of STATE. The tangible personal property is held in storage without use until it is determined where it is needed. At times, the final

destination of the property may be known at the time of purchase. When it is transferred to The Company's location in the State of Illinois, The Company accrues and remits the Illinois Use Tax regardless of the amount of time it has been held in storage.

4. The supplier delivers the tangible personal property to The Company's headquarters in the State of STATE. The tangible personal property is tested and often modified to the specific needs of a location. Again, the final destination of the property may or may not be known at the time of purchase. Upon completion of the testing and modification it is transferred to The Company's location in the State of Illinois, The Company accrues and remits the Illinois Use Tax regardless of the amount of time it has been used for testing or modification.

Intra-Company Transfers of Tangible Personal Property

Additionally, due to changing business needs The Company routinely makes intra-company transfers of tangible personal property among their locations. Their current policy is to accrue and remit use tax for the appropriate receiving location's state regardless of whether sales or use tax was previously paid to another state or regardless of the amount of time the property was previously used in another state.

Taxability of Purchases and Intra-Company Transfers

When the supplier delivers the tangible personal property directly to The Company's location in the State of Illinois (methods 1 and 2 above) the Illinois Sales or Use Tax is paid. There is no question regarding the taxability of these transactions.

However, the applicability of the Illinois Sales and Tax Law becomes less clear when the supplier delivers the tangible personal property to The Company's headquarters in STATE and for it's intra-company transfers between their locations in different states. Therefore, we have the following questions:

1. Tangible personal property is delivered to The Company's headquarters in STATE; the final destination is not known at the time of purchase and the property is held in storage for a period of less than three months prior to being shipped to The Company's location in the State of Illinois. Is Illinois Use Tax due upon the purchase when delivery occurs?
2. Tangible personal property is delivered to The Company's headquarters in STATE; the final destination is known to be The Company's location in the State of Illinois at the time of purchase and the property is held in storage for a period of less than three months. Is Illinois Use Tax due upon the purchase when delivery occurs?
3. Tangible personal property is delivered to The Company's headquarters in STATE; the final destination is not known at the time of purchase and the property is held in storage for a period of more than reasonable time prior to being shipped to The Company's location in the State of Illinois. Is Illinois Use Tax due upon the purchase when delivery occurs?
4. Tangible personal property is delivered to The Company's headquarters in STATE; the final destination is known to be The Company's location in the State

of Illinois at the time of purchase and the property is held in storage for a period of more than three months. Is Illinois Use Tax due upon the purchase when delivery occurs?

5. Tangible personal property is delivered to The Company's headquarters in STATE; the final destination is not known at the time of purchase and the property is used for testing or is modified. The period of testing or modification is less than three months prior to being shipped to The Company's location in the State of Illinois. Is Illinois Use Tax due upon the purchase when delivery occurs?
6. Tangible personal property is delivered to The Company's headquarters in STATE; the final destination is known at the time of purchase and the property is used for testing or is modified. The period of testing or modification is less than three months prior to being shipped to The Company's location in the State of Illinois. Is Illinois Use Tax due upon the purchase when delivery occurs?
7. Tangible personal property is delivered to The Company's headquarters in STATE; the final destination is not known at the time of purchase and the property is used for testing or is modified. The period of testing or modification is more than three months prior to being shipped to The Company's location in the State of Illinois. Is Illinois Use Tax due upon the purchase when delivery occurs?
8. Tangible personal property is delivered to The Company's headquarters in STATE; the final destination is known at the time of purchase and the property is used for testing or is modified. The period of testing or modification is more than three months prior to being shipped to company's location in the State of Illinois. Is Illinois Use Tax due upon the purchase when delivery occurs?
9. Are intra-company transfers of tangible personal property from outside of the State of Illinois to The Company's location within Illinois subject to Illinois Use Tax if another states sales or use tax were previously paid on these purchases? If so, is it only the difference if the tax previously paid was at a lower rate than what is levied for within the jurisdiction where The Company's location is within Illinois? It is assumed that prior use outside of Illinois was for a period of more than three months.
10. Are intra-company transfers of tangible personal property from outside the State of Illinois to The Company's location within Illinois subject to Illinois Use Tax if the prior use occurred within the State of STATE, which does not levy sales, and use tax? It is assumed that prior use in STATE was for a period of more than three months.

Should you need further information please e-mail me.

Thank you in advance for your assistance.

The purchase of tangible personal property anywhere at retail from a retailer for use in Illinois is subject to the Illinois Use Tax. Therefore, when items are purchased outside Illinois and then brought into Illinois the use tax is imposed on the privilege of using such property in Illinois. Please see the enclosed copy of 86 Ill. Adm. Code 150.101.

Application of the Illinois Use Tax can be avoided or minimized, however, if tax was paid to another state in respect to the sale, purchase or use of tangible personal property before bringing such property into Illinois. A credit in the amount of the tax properly due and paid in the other state will be allowed on your Use Tax return. Please see the enclosed copy of 86 Ill. Adm. Code 150.310(a)(3), Exemptions to Avoid Multi-State Taxation. Additionally, depreciation of the value of the property is allowed for use of the property outside the State of Illinois prior to the property being brought into Illinois. Please see 86 Ill. Adm. Code 150.110(c), enclosed.

Therefore, in answer to your questions under scenarios 1 through 8 of your letter, Illinois Use Tax is due when the tangible personal property purchased outside the state is brought into Illinois for use. For each case you describe, however, if tax was properly due and paid in another state on tangible personal property brought into Illinois, then your client may credit the amount of that tax paid on its return in determining its Illinois Use Tax liability. If a state in which the property was purchased or used does not impose a sales or use tax, then your client will be liable for Illinois Use Tax without being credited for tax due and paid in the other state.

With regard to intra-company transfers detailed in scenarios 9 and 10, insufficient information is provided as to whether these transfers are being made between locations of the same legal entity. Therefore, it cannot be determined whether a credit for taxes paid to another state would be allowed against any Illinois Use Tax liability in such situations. If the transfer of property was made between various locations of the same company, rather than between separate legal entities, the above answers hold equally true in such situations. If, however, the transfers were between separate legal entities, then no credit is allowed against Illinois Use Tax for another state's sales or use tax paid by the transferring business.

Each scenario in your letter noted whether the property had been held or used in another state for at least 3 months. Enclosed please find 86 Ill. Adm. Code 150.315, Non-resident Exemptions, which explains when Illinois Use Tax will not apply to property brought into Illinois by non-resident individuals and businesses that have not operated in Illinois. Under 150.315, a business not operating in Illinois but which moves to Illinois or opens up an office or other business facility in Illinois, shall not be taxed on its use of non-titled or non-registered property that the business brought into Illinois, provided that the property was used in the operation of such business for at least 3 months prior to bringing the property into Illinois. As your client has a location in Illinois from which it conducts its business, your client is a business operating in Illinois and therefore is not entitled to claim this exemption.

I hope this information has been helpful. The Department of Revenue maintains a website, which can be accessed at www.revenue.state.il.us. If you have further questions related to the Illinois sales and use tax laws, please contact the Department's Taxpayer Information Division at (217) 782-3336.

If you are not under audit and you wish to obtain a binding Private Letter Ruling regarding your factual situation, please submit all of the information set out in items 1 through 8 of Section 1200.110(b).

Sincerely,

Dana Deen Kinion
Associate Counsel

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Enc.